



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0709]

RIN 1625- AA00

Safety Zone; Dredge Arthur J, Lake Huron, Lakeport, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone on lower Lake Huron, Lakeport, MI. This safety zone is intended to restrict vessels from a portion of Lake Huron during the preparation for and salvage operations of the Arthur J. dredge vessel. This temporary safety zone is necessary to protect people, vessels and the environment from the hazards associated with a salvage operation.

DATES: This rule is effective with actual notice from 11:00 a.m. on July 28, 2012 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule is effective in the Federal Register from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 11:00 a.m. on August 25, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0709]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box, and click "Search." You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313)568-9508, e-mail [Adrian.F.Palomeque@uscg.mil](mailto:Adrian.F.Palomeque@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule

without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The emergency sinking of the dredge vessel Arthur J. precluded the Coast Guard from having sufficient time to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect people vessels and the environment from the hazards associated with a vessel salvage operation, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, waiting

for 30 day notice period run would be impracticable and contrary to the public interest.

B. Basis and Purpose

As suggested above, salvage operations will continue in lower Lake Huron, MI. The Coast Guard expects these salvage operations to continue until approximately 11:00 a.m. on August 25, 2012. The Captain of the Port Detroit has determined that this continuing vessel salvage operation poses a significant risk to public safety and property. Such hazards include accidental vessel collisions, potential fuel spills, and potential diving operations.

In relation to the salvage operation associated with this Temporary Final Rule (TFR), the Coast Guard has already published and enforced two TFRs. Each of those TFRs established a safety zone centered on the same coordinate as the safety zone created herein. Although the center point of each of these three safety zones is identical, the radius of the first safety zone was only 100 yards, while the radius of this safety zone and the second safety zone is 500 yards. The first safety zone was effective and enforced from July 19, 2012 until July 21, 2012. The second safety zone was effective and enforced from July 21, 2012 until July 28, 2012. To date, the Coast

Guard knows of no negative impacts on the public as a result of the enforcement of these two prior safety zones.

### C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Detroit has determined that a temporary safety zone is necessary to ensure the safety of people and vessels during the continued Arthur J. dredge vessel salvage operations. As discussed above, two safety zones in response to this sunken vessel were previously established, running consecutively from July 19 to the morning of July 28, 2012. However, the Captain of the Port, Sector Detroit has determined that the safety zone needs to be established for a longer period of time in order to better mitigate the risks to public safety and property from this continued operation.

This safety zone will be effective and enforced from 11:00 a.m. on July 28, 2012 until 11:00 a.m. on August 25, 2012. This zone will encompass all waters of lower lake Huron, in the vicinity of Lake Port, MI within a 500 yards radius of position 43° 06'06" N, 082° 27'03" W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene

representative may be contacted via VHF Channel 16.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time.

Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of lower Lake Huron from 11:00 a.m. on July 28, 2012 until 11:00 a.m. on August 25, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for a relatively short time, and if salvage operations are completed before August 25,

2012, the enforcement of the safety zone will be terminated early. Traffic will be allowed to pass around the zone with the coordination of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the enforcement of the zone, we would issue local Broadcast Notice to Mariners.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not



retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically

significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast

Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone, and therefore, it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0709B to read as follows:

§ 165.T09-0709B Safety Zone; Dredge Arthur J., Lake Huron, Lakeport, MI

(a) Location. The safety zone will encompass all waters of lower lake Huron, in the vicinity of Lakeport, MI within a 500 yards radius of position 43° 06'06" N, 082° 27'03" W (NAD 83).

(b) Effective and Enforcement Period. This regulation is effective and enforced from 11:00 a.m. on July 28, 2012 until 11:00 a.m. on August 25, 2012.

(c) Regulations.

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the

Port Detroit is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit, or his on-scene representative.

Dated: July 27, 2012

J. E. Ogden  
Captain, U. S. Coast Guard  
Captain of the Port Detroit

[FR Doc. 2012-19347 Filed 08/07/2012 at 8:45 am; Publication Date: 08/08/2012]